

STATE OF MICHIGAN  
COURT OF APPEALS

---

JULIE JOHNSTON,

Plaintiff-Appellant,

v

NORTH CENTRAL AREA CREDIT UNION,  
TIM LENHARD, and COUNTY OF  
ROSCOMMON,

Defendants-Appellees.

---

UNPUBLISHED

June 26, 2003

No. 237139

Roscommon Circuit Court

LC No. 00-722171-NZ

Before: Smolenski, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court’s grant of summary disposition to defendants. Plaintiff alleged that defendants defamed her,<sup>1</sup> were responsible for her false imprisonment, maliciously prosecuted her, and that defendant Lenhard tortiously interfered with her contract of employment with defendant North Central Area Credit Union (NCACU). This complaint was filed after plaintiff was found not guilty by a jury on the criminal charge of embezzling \$12,195.50 from the NCACU. We affirm.

I

Plaintiff first contends that the trial court erred by granting summary disposition before discovery had been completed. This Court reviews de novo a trial court’s decision regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition may be granted even where discovery is still open “if there is no fair chance that further discovery will result in factual support for the party opposing the motion.” *Mackey v Dep’t of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994), citing *Neumann v State Farm Automobile Ins Co*, 180 Mich App 479, 485; 447 NW2d 786 (1989).

The trial court granted summary disposition on plaintiff’s claims of defamation and false imprisonment on the basis that those claims were barred by the statute of limitations. That determination was a ruling on a legal question for which there is no factual dispute. Plaintiff

---

<sup>1</sup> Plaintiff has also contended that her complaint alleged a claim of false light invasion of privacy.

does not contend that further discovery would have disclosed facts showing that the statute of limitations was not violated. Accordingly, the fact that discovery was still open did not preclude the trial court from granting summary disposition. *Mackey, supra* at 333-334.

In regard to the claim of malicious prosecution, the trial court noted that the district court and the circuit court found probable cause to support the criminal charges, and that under these circumstances, plaintiff failed to demonstrate a viable legal basis to sustain her claim of malicious prosecution. Once again, plaintiff has failed to establish that further discovery would have disclosed material facts demonstrating that probable cause did not exist. Instead, plaintiff suggests that Lenhard's membership on NCACU's board of directors and loan committee would have given him a pecuniary interest in avoiding the credit union's financial loss. Lenhard's membership on the board and the committee is an undisputed fact, and plaintiff fails to explain how further discovery would result in the presentation of material facts that would support her claim.

Next, as to the false light invasion of privacy and tortious interference claims, the trial court ruled that plaintiff failed to articulate any material facts that she expected to obtain through further discovery.<sup>2</sup> “[A]n adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth *specific facts* showing that there is a genuine issue for trial.” MCR 2.116(G)(4), emphasis supplied. “A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial.” *Maiden, supra* at 121.

Although plaintiff speculated, in response to the trial court's repeated inquiries, that some unspecified evidence might be developed through further discovery, “parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact.” *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). The trial court therefore correctly granted summary disposition regarding these claims.

## II

Next, plaintiff argues that the trial court erred by granting summary disposition in favor of defendant on her alleged claim of false light invasion of privacy. We disagree and conclude that plaintiff failed to allege a separate claim of false light invasion of privacy.

In *Duran v The Detroit News, Inc*, 200 Mich App 622, 631-632; 504 NW2d 715 (1993), this Court stated:

---

<sup>2</sup> Plaintiff argues that defendants had not yet been deposed and that they had failed to respond to interrogatories. However, the record does not indicate that plaintiff noticed any depositions or moved to compel answers to her interrogatories. See *Prysak v R L Polk Co*, 193 Mich App 1, 11; 483 NW2d 629 (1992). Further, plaintiff does not explain which interrogatories might have provided specific facts demonstrating the existence of a material fact issue for trial.

In order to maintain an action for false-light invasion of privacy, a plaintiff must show that the defendant broadcast to the public in general, or to a large number of people, information that was unreasonable and highly objectionable by attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position. *Sawabini [v Desenberg]*, 143 Mich App 373] *supra* at 381 [372 NW2d 559 (1985)].

Plaintiff claimed that her false light claim was included in count I of her complaint. Initially, we note that while plaintiff clearly labeled the tort claims set forth in counts II, III, and IV, and each of these counts alleges a single tort, she has failed to specify the tort claimed in count I. Instead, count I references a “laundry list” of allegations: “maliciously prosecute, falsely imprison, and paint in a false light and defame.” The false light claim is only obtusely and imprecisely mentioned and is linked with the defamation claim. Further, the allegations made in count I of the complaint fail to establish the elements of false light invasion of privacy. We therefore conclude that plaintiff failed to properly allege a claim of false light invasion of privacy against either defendant and, in light of this deficiency, defendants could not be expected to anticipate the existence of that claim and respond to it – or request summary disposition of it.

Moreover, under the circumstances, where plaintiff is unable to offer any evidentiary support for her claim, a remand to permit plaintiff to amend her complaint would not be justified. See, generally, MCR 2.116(I)(5), *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 696-697; 588 NW2d 715 (1998). Plaintiff has failed to allege, or offer, any specific facts to show that “unreasonable and highly objectionable [information] attributing to the plaintiff characteristics, conduct, or beliefs that were false and placed the plaintiff in a false position” was broadcast to the general public or to a large number of people. *Duran, supra* at 631-632.

### III

Plaintiff next contends that the trial court erred by granting summary disposition to defendant Lenhard on the tortious interference claim. Plaintiff argues that she pleaded an adequate claim of tortious interference because she alleged that Lenhard acted with the purposeful intent to interfere with her business relationship with the NCACU. Plaintiff claimed that “Lenhard did use his badge and under color of state law [sic], to deprive the Plaintiff of her constitutional rights and to manipulate the systems [sic] so as to use his authority as a Michigan State Police detective to get the prosecutor’s office to institute charges against the Plaintiff.” We disagree.

To prove a claim of tortious interference with a contractual or business relationship, plaintiff was required to show “the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another.” *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). “A wrongful act per se is an act that is inherently wrongful or an act that can never be justified under any circumstances.” *Prysak v R L Polk Co*, 193 Mich App 1, 12-13; 483 NW2d 629 (1992). Plaintiff failed to allege that Lenhard committed a wrongful act per se. Lenhard’s action was to conduct an investigation and turn the results over to the county prosecutor for a determination whether criminal charges should be issued. Lenhard is a Michigan State Police detective and that is what police detectives are sworn to do – conduct criminal investigations.

Therefore, plaintiff failed to make a prima facie case of tortious interference by the intentional commission of a per se wrongful act.

Plaintiff also failed to make a prima facie showing that Lenhard performed a lawful act (the criminal investigation) with malice and without justification for the purpose of interfering with plaintiff's contractual rights or business relationship with the NCACU. Plaintiff's allegations in this regard are conclusory, and "[t]he mere statement of a pleader's conclusions, unsupported by allegations of fact upon which they may be based, will not suffice to state a cause of action." *Kramer v Dearborn Heights*, 197 Mich App 723, 725; 496 NW2d 301 (1993), citing *NuVision v Dunscombe*, 163 Mich App 674, 681; 415 NW2d 234 (1987). We therefore conclude that summary disposition was properly granted with regard to the tortious interference claim.

#### IV

Plaintiff argues that the trial court erred in concluding that she failed to adequately plead her causes of action. As previously noted, the trial court granted summary disposition on plaintiff's claims of defamation and false imprisonment because they were barred by the statute of limitations, and it granted summary disposition on the malicious prosecution, false light invasion of privacy, and tortious interference claims because they were not adequately pleaded.

The statute of limitations for defamation is one year. MCL 600.5805(8). Plaintiff failed to describe with specificity what defamatory statements were made or when they were published. However, from the allegations contained in plaintiff's complaint, it may be inferred that the statements were made at or around the time of the police investigation in March and April 1998, or, at the latest, before the arrest warrant was issued in June 1998. Plaintiff did not file a complaint alleging defamation until November 27, 2000. Therefore, her defamation claim was barred by the statute of limitations because it was not brought within one year of the alleged defamatory statements.

Likewise, because the alleged false imprisonment occurred on the day plaintiff was arrested (June 11, 1998), she was released on bond that same day, and plaintiff's complaint alleging false imprisonment was not filed until November 27, 2000, the false imprisonment claim was filed beyond the two-year period of limitation. MCL 600.5805(2). Plaintiff nonetheless argues that the false imprisonment continued until her bond was cancelled when she was acquitted in December of 1999 and that she therefore filed her claim within one year of her imprisonment. However, plaintiff has failed to provide any authority that supports her argument that false imprisonment continues during the time an individual is free on bond. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

In any event, according to *Collins v Co of Los Angeles*, 241 Cal App 2d 451, 455; 50 Cal Rptr 586 (1966), the "almost universal rule" is that a claim of false imprisonment accrues on the termination of the imprisonment "and not at the time the proceedings under which plaintiff's arrest occurred ended." The *Collins* case further notes that the purpose of bail is to secure one's

release from custody, *Collins, supra* at 459; therefore, it seems logical that someone who is released from custody on bond can no longer be falsely imprisoned. In accord, *Shakespeare v City of Pasadena*, 230 Cal App 2d 375, 384; 40 Cal Rptr 863 (1964), and *Jackson v Thompson*, 188 SW2d 853, 857-858 (Mo App, 1945). This Court therefore concludes that because plaintiff was admitted to bond and released from custody on June 11, 1998, her cause of action for false imprisonment accrued at that time, and because she did not bring an action alleging false imprisonment until more than two years after the cause of action accrued, her claim is barred by the statute of limitations.

Regarding the claim of malicious prosecution, according to *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998):

The plaintiff has the burden of proving (1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice. *Rivers v Ex-Cell-O Corp*, 100 Mich App 824, 832 ; 300 NW2d 420 (1980), citing *Weiden v Weiden*, 246 Mich 347, 352; 224 NW 345 (1929).

However, “in Michigan, the prosecutor’s exercise of his independent discretion in initiating and maintaining a prosecution is a complete defense to an action for malicious prosecution.” *Matthews, supra* at 384, citing *Christy v Rice*, 152 Mich 563, 565; 116 NW 200 (1908).

Here, Lenhard conducted an investigation by interviewing employees of the NCACU, including plaintiff, by reviewing evidence that was presented to him by the NCACU, and by having plaintiff voluntarily submit to a polygraph examination. The information assembled during the investigation indicated that it was reasonably probable that plaintiff was responsible for the theft of the money from the coin vault. The results of the investigation were then turned over to the county prosecutor who issued a warrant approximately two months later. A preliminary examination was conducted and the district court found probable cause to bind plaintiff over for trial. The trial court subsequently denied a motion to quash, thereby finding that probable cause existed to support the bindover. The evidence conclusively showed that there was probable cause to justify submission of the case to the prosecutor and that the prosecutor’s decision to issue a warrant was supported by probable cause. Therefore, summary disposition was properly granted on the malicious prosecution claim.

With regard to the defamation claim, plaintiff was required to establish that defendants made false and defamatory statements about her, and that they made an unprivileged publication of these statements. *Ireland v Edwards*, 230 Mich App 607, 614; 584 NW2d 632 (1998). Plaintiff did not allege with specificity the statements made by defendants that were allegedly defamatory. As Lenhard points out, his investigation report does not specifically accuse plaintiff of stealing money. Moreover, because Lenhard is a police officer and was investigating a possible criminal offense, his inclusion of the statements or suggestions of others that plaintiff

was responsible for the theft of the money is qualifiedly privileged. Likewise, the statements of witnesses to Lenhard were qualifiedly privileged.<sup>3</sup> This Court explained in *Prysak*, *supra* at 15:

The elements of a qualified privilege are (1) good faith, (2) an interest to be upheld, (3) a statement limited in its scope to this purpose, (4) a proper occasion, and (5) publication in a proper manner and to proper parties only. *Bufalino v Maxon Bros, Inc*, 368 Mich 140, 153; 117 NW2d 150 (1962); *Smith v Fergan*, 181 Mich App 594, 596-597; 450 NW2d 3 (1989). A plaintiff may overcome a qualified privilege only by showing that the statement was made with actual malice, i.e., with knowledge of its falsity or reckless disregard of the truth. *Id.* at 597. General allegations of malice are insufficient to establish a genuine issue of material fact. *Gonyea v Motor Parts Federal Credit Union*, 192 Mich App 74; 480 NW2d 297 (1991); *Smith*, *supra* at 597.

There was no factual showing that the statements were not made in good faith. The interests to be upheld in this case are the public's interest in the full investigation of allegations of criminal behavior and witnesses' interests in being able to provide complete statements to the police without fear of civil lawsuits. Although, once again, plaintiff has failed to specify exactly what statements were made, it appears beyond challenge that the only statements offered by either Lenhard or the NCACU's employees were limited to the criminal investigation; that is, that plaintiff had stolen the money from the coin vault because she was responsible for all transactions related to the vault; she had ready access to the vault; she could not account for the missing receipt book and ledger pages covering the relevant period; she made suspicious ATM deposits; her account of her family finances was not substantiated by a comparison of the family income and the deposits made; investigation of alleged loans from her sister disclosed that plaintiff may have forged several checks with her sister's name; and plaintiff failed to pass a polygraph examination. Lenhard and the NCACU's employees made these statements during the course of the criminal investigation. The employees made their statements to Lenhard, the police officer conducting the investigation, and he in turn made his statements to the county prosecutor. Finally, plaintiff did not overcome defendants' qualified immunity because she made only general allegations of malice. Accordingly, not only did plaintiff fail to adequately assert an actionable defamation claim, she failed to overcome defendants' assertion of absolute or qualified immunity.

This Court has already considered the adequacy of the tortious interference and false light invasion of privacy claims and concluded that they were properly dismissed.

## V

Finally, with regard to the tort claims made against Lenhard, an alternate basis for affirming the trial court is provided by governmental immunity. As a Michigan State Police detective, Lenhard was entitled to governmental immunity unless plaintiff could demonstrate that he was engaged in a nongovernmental or proprietary function or that he was grossly negligent

---

<sup>3</sup> Both Lenhard and the NCACU claimed that their statements were either absolutely or qualifiedly privileged.

and his gross negligence was the proximate cause of any injury. MCL 691.1407(2).<sup>4</sup> Plaintiff was required to plead in avoidance of governmental immunity and she failed to do so. *Mack v Detroit*, 467 Mich 186, 204-205; 649 NW2d 47 (2002).

In any event, the record demonstrates that Lenhard was acting within the scope of his authority as a police officer and that he was engaged in a governmental function when he conducted an investigation of possibly criminal behavior; furthermore, plaintiff failed to plead any specific facts establishing that Lenhard was grossly negligent and that his gross negligence was the proximate cause of her alleged injury. MCL 691.1407(2)(a), (b), and (c). Lenhard fully disclosed the results of his investigation to the prosecutor, and the prosecutor made the ultimate decision to issue criminal charges against plaintiff. It was the prosecutor's independent decision to issue those charges that was the proximate cause of plaintiff's alleged injury. *Renda v Int'l Union, UAW*, 366 Mich 58, 84; 114 NW2d 343 (1962); *Simmons v Telcom Credit Union*, 177 Mich App 636, 638-639; 442 NW2d 739 (1989). Therefore, plaintiff's failure to plead in avoidance of governmental immunity offers an alternate basis to support the trial court's grant of summary disposition to Lenhard under a "correct result/wrong reason" analysis. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411, n 10; 443 NW2d 340 (1989).

Affirmed.

/s/ Michael R. Smolenski  
/s/ Richard Allen Griffin  
/s/ Peter D. O'Connell

---

<sup>4</sup> Pursuant to MCL 691.1407(2), an employee of a governmental agency is entitled to immunity from tort liability caused by the employee in the course of his or her employment provided: (1) the employee is acting or reasonably believes he or she is acting within the scope of his or her authority; (2) the governmental agency is engaged in the exercise of a governmental function; and (3) the employee's conduct does not amount to gross negligence that is the proximate cause of the injury. "[G]ross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1047(2)(c).